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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.
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09/398,897 09/20/99 YANG

R 0109015/016

HM12/0327

EXAMINER

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CHICAGO IL 60690-1135

HAYES, R

ART UNIT	PAPER NUMBER
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1647

*3*

DATE MAILED:

03/27/01

Please find below and/or attached an Office communication concerning this application or proceeding.

Commissioner of Patents and Trademarks

## Office Action Summary

Application No. 09/398,897	Applicant(s) Yang et al
Examiner Robert C. Hayes	Group Art Unit 1647



Responsive to communication(s) filed on \_\_\_\_\_.

This action is FINAL.

Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11; 453 O.G. 213.

A shortened statutory period for response to this action is set to expire 1 month(s), or thirty days, whichever is longer, from the mailing date of this communication. Failure to respond within the period for response will cause the application to become abandoned. (35 U.S.C. § 133). Extensions of time may be obtained under the provisions of 37 CFR 1.136(a).

### Disposition of Claims

Claim(s) 1-22 is/are pending in the application.

Of the above, claim(s) \_\_\_\_\_ is/are withdrawn from consideration.

Claim(s) \_\_\_\_\_ is/are allowed.

Claim(s) \_\_\_\_\_ is/are rejected.

Claim(s) \_\_\_\_\_ is/are objected to.

Claims 1-22 are subject to restriction or election requirement.

### Application Papers

See the attached Notice of Draftsperson's Patent Drawing Review, PTO-948.

The drawing(s) filed on \_\_\_\_\_ is/are objected to by the Examiner.

The proposed drawing correction, filed on \_\_\_\_\_ is  approved  disapproved.

The specification is objected to by the Examiner.

The oath or declaration is objected to by the Examiner.

### Priority under 35 U.S.C. § 119

Acknowledgement is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d).

All  Some\*  None of the CERTIFIED copies of the priority documents have been

received.

received in Application No. (Series Code/Serial Number) \_\_\_\_\_.

received in this national stage application from the International Bureau (PCT Rule 17.2(a)).

\*Certified copies not received: \_\_\_\_\_.

Acknowledgement is made of a claim for domestic priority under 35 U.S.C. § 119(e).

### Attachment(s)

Notice of References Cited, PTO-892

Information Disclosure Statement(s), PTO-1449, Paper No(s). \_\_\_\_\_

Interview Summary, PTO-413

Notice of Draftsperson's Patent Drawing Review, PTO-948

Notice of Informal Patent Application, PTO-152

--- SEE OFFICE ACTION ON THE FOLLOWING PAGES ---

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## DETAILED ACTION

### *Election/Restriction*

1. Restriction to one of the following inventions is required under 35 U.S.C. 121:
  - I. Claims 1-5 & 12-16, drawn to methods of producing stable cell lines of multipotent neural precursor cells following transfection with c-myc constructs, classified in Class 435, subclass 377.
  - II. Claims 6-8 & 17-19, drawn to populations of mammalian CNS multipotent neural precursor cells, classified in Class 435, subclass 368.
  - III. Claims 9, 11, 20 & 22, drawn to populations of mammalian CNS glial-restricted precursor cells, classified in Class 435, subclass 368.
  - IV. Claims 10 & 21, drawn to populations of mammalian CNS neuronal-restricted precursor cells, classified in Class 435, subclass 368.
2. The inventions are distinct, each from the other because of the following reasons:

Although there are no provisions under the section for "Relation of Inventions" in MPEP 806.05 for inventive groups that are directed to different products, restriction is deemed proper because these products appear to constitute patentably distinct inventions for the following reason:

Groups II-IV are directed to products that are physically and functionally distinct, which include cell cultures comprising distinct populations of CNS neural stem/precursor cells. The cell

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populations of Group II are a fundamentally different and distinct population of neural cells that can give rise to both neuronal and glial cells, unlike the distinct CNS neural cell populations of Group III that are glial-restricted precursor cells, and unlike the distinct CNS cell populations of Group IV that are neuronal-restricted precursor, and vice versa. It is pointed out that there is a proper distinction between these groups, since each product is not required in order for the other to exist. Thereby, these groups are distinct and separable for the reasons stated.

Because these inventions are distinct for the reasons given above, they have acquired a separate status in the art as shown by their different classification, and the lack of coextensiveness of the search and examination for each group would constitute an undue burden on the examiner to search and consider all the separable groups, restriction for examination purposes as indicated is proper.

3. Applicant is advised that the reply to this requirement to be complete must include an election of the invention to be examined even though the requirement be traversed (37 CFR 1.143).

Applicant is reminded that upon the cancellation of claims to a non-elected invention, the inventorship must be amended in compliance with 37 CFR 1.48(b) if one or more of the currently named inventors is no longer an inventor of at least one claim remaining in the application. Any amendment of inventorship must be accompanied by a petition under 37 CFR 1.48(b) and by the fee required under 37 CFR 1.17(I).

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Any inquiry concerning this communication or earlier communications from the examiner should be directed to examiner Robert Hayes whose telephone number is (703) 305-3132. The examiner can normally be reached on Monday through Thursday, and alternate Fridays, from 8:30 AM to 5:30 PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Gary Kunz, can be reached on (703) 308-4623. The fax phone number for this Group is (703) 308-4242.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the Group receptionist whose telephone number is (703) 308-0196.

*RCH*

Robert C. Hayes, Ph.D.  
March 26, 2001

*Gary L. Kunz*  
GARY L. KUNZ  
SUPERVISORY PATENT EXAMINER  
TECHNOLOGY CENTER 1600